

956

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

'85 JUL 24 P 1:48

Nunzio J. Palladino, Chairman
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal
Lando W. Zech, Jr.

SERVED JUL 25 1985

In the Matter of
SEQUOYAH FUELS CORPORATION
(Sequoyah Facility)

Docket No. 40-8027

ORDER

By application dated January 24, 1985, Sequoyah Fuels Corporation ("SFC"), a wholly owned subsidiary of Kerr-McGee Corporation, applied for an amendment to its source material license (No. SUB-1010) seeking authorization to add facilities at its existing Sequoyah plant in Gore, Oklahoma, that would allow it to convert depleted uranium hexafluoride to depleted uranium tetrafluoride. The Commission has received letters from the Native Americans for a Clean Environment Client Council ("NACECC") and the Citizens Action for a Safe Environment ("CASE") requesting that a hearing be held relative to the SFC amendment request.

In making an initial disposition of these hearing requests, we note that in our decision in Kerr-McGee Corp. (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232 (1982), aff'd, City of West Chicago v. NRC, 701 F.2d 632 (7th Cir. 1983), the Commission indicated that there

8507260614 850724
PDR ADOCK 04008027
C PDR

DS02

was no entitlement to a formal, trial-type hearing under either the Atomic Energy Act or NRC regulations with regard to materials licensing actions. Further, the hearing requests do not give us cause to exercise our discretion and grant a formal hearing under the "public interest" standard of 10 CFR §§ 2.104(a) and 2.105(a)(7) or to find due process concerns require that a formal hearing need be convened. Therefore, only an informal hearing need be instituted at this time.

With regard to the conduct of the informal proceeding, we direct the Chairman of the Atomic Safety and Licensing Board Panel to designate a single member of that Panel to act as the presiding officer. Because of the terse nature of the hearing petitions pending before the Commission, we believe it is necessary for the presiding officer to request further filings to clarify the concerns of petitioners NACECC and CASE to determine whether the petitioners can fulfill the requirements for intervention by "interested persons" so as to mandate that a hearing be convened. Also, in order to ensure that all interested persons are identified and heard on a timely basis, the presiding officer should arrange for publication in the Federal Register of a notice of opportunity for hearing that notes the pendency of the hearing request regarding the SFC amendment application and invites all interested persons desiring to intervene in any hearing proceeding to be conducted to file a petition to intervene with the Docketing and Service Branch of the Office of the Secretary within thirty days of the publication of the notice. The further statements by Petitioners NACECC and CASE and any intervention statements must set forth with particularity (1) the interest of that person in the proceeding; (2) how that interest

may be affected by the results of the proceeding, including a delineation of the reasons why that person should be permitted to intervene that makes particular reference to (a) the nature of the person's right under the Atomic Energy Act to be made a party, (b) the nature and extent of the person's property, financial or other interest in the proceeding, and (c) the possible effect of any order that may be entered in the proceeding on the person's interest; and (3) the specific aspect or aspects of the subject matter of the proceeding that the person seeks to have litigated. Petitioner NACECC's and petitioner CASE's additional filings and the statements by those seeking to intervene as parties will be deemed filed when personally delivered to the Office of the Secretary or when deposited in the United States mail, properly addressed and first-class postage prepaid.

The parties to the informal adjudication shall be SFC; Petitioners NACECC and CASE, if petitioners' additional statements are found adequate; and any person found to have filed a proper intervention statement. The NRC staff also may appear as a party if it so desires.

Determinations by the presiding officer on the standing of persons seeking to intervene as parties to the proceeding will be governed by existing agency precedents regarding 10 CFR § 2.714(d). See Rockwell International Corp. (Energy Systems Group Special Nuclear Materials License No. SNM-21), ASLPB No. 83-488-01 ML, at 4-5 (Admin. Judge Oct. 7, 1983). If the presiding officer finds that NACECC's or CASE's petition for hearing or any intervention petition should be denied in toto on the basis of lack of standing or any other reason, such determination, which will be in writing, will become final agency action

within thirty days unless the Commission, on its own, undertakes a review of that decision. No petition for review will be entertained by the Commission regarding the presiding officer's decision on such matters.

In carrying out his responsibility under this delegation, the presiding official also shall have the authority to request and receive whatever written submissions and documents he deems necessary from any party on any schedule he deems proper. Such requests can include requirements that petitioners or any intervening parties provide additional information relative to their standing to participate or further particularize the aspects of the subject matter of the proceeding they wish to litigate or that the parties answer specific questions, with supporting materials, that the presiding officer poses to them. In addition, at such time as may be specified by the presiding officer, persons who do not desire to become parties or cannot fulfill the requirements for party status may file a statement indicating they wish to make a limited appearance regarding any issue in the proceeding. The presiding officer shall have the authority to fix such limitations and conditions as appropriate on the participation of those making limited appearances and they are not otherwise to participate in the proceeding.

In his discretion the presiding office also may entertain oral presentations from the parties or those making a limited appearance. Any oral communications between the presiding officer and any party or any person making a limited appearance concerning any matter at issue in the proceeding will be conducted in the presence of the parties or

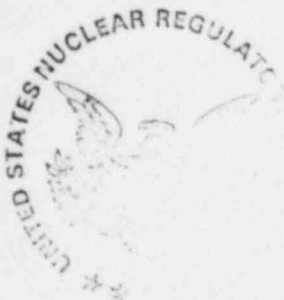
memorialized in a written memorandum that is served on all parties and made a part of the docket file on the proceeding.

If, on the basis of the parties' presentations and other information that the adjudicator is entitled to rely upon as discussed below, the presiding officer believes that additional procedures are necessary to ensure the full development of the agency record or to resolve any material factual issues that could not be resolved through the procedures set forth in this order, he should seek authority from the Commission to implement any additional procedures.


The presiding officer's decision, which is to be in writing, should be made on the basis of the written submissions of the parties, any oral presentations by the parties, and other technical or factual information that is publicly available in the docket file. The presiding officer's decision will become final agency action thirty days after the date of issuance unless the Commission, on its own motion, undertakes a review of the decision. No petition for review will be entertained by the Commission regarding the presiding officer's decision.

Commissioner Roberts disapproved this order. His dissenting views are attached.

It is so ORDERED.



For the Commission



SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.

this 4 day of July, 1985.

7/24/85

DISSENTING VIEWS OF COMMISSIONER ROBERTS *TRM*

I do not object to granting the hearing that has been requested. However, I do object to the procedures that have been accepted by the majority for conducting the hearing. Although the use of informal procedures for materials license proceedings was judicially approved in the West Chicago case, the procedures that have been accepted by the majority for use in this proceeding retain too many of the trappings of a formal hearing. I believe that these more formal procedures have the potential for consuming unnecessary time and resources without any obvious benefits.